

Internal Revenue Service
memorandum

CC:FS:PRO
GEBowden

date: DEC 27 1991

to: District Counsel, Manhattan
Attn: Melanie Garger

from: Chief, Procedural Branch, Field Service Division FS:PRO

subject: [REDACTED]

Your memorandum of October 23, 1991, requested Field Service Advice with respect to the above referenced case. The issue to be addressed is when, under the following facts, deficiency interest starts to run with respect to a deficiency determined for taxpayer's [REDACTED] tax year.

On [REDACTED], taxpayer filed a Form 7004 Application for Automatic Extension of Time to File Corporation Income Tax Return and paid 100% of the tentative tax due in the amount of \$[REDACTED]. On [REDACTED], taxpayer filed its Form 1120 showing net tax due of \$[REDACTED] and electing to credit the \$[REDACTED] balance to the subsequent year. This was done, as of [REDACTED]. In [REDACTED], an examination of taxpayer's returns found that there was a deficiency in income tax of \$[REDACTED] for [REDACTED].

Your memorandum concludes that interest on the \$[REDACTED] deficiency should not start to run until [REDACTED]. This is the date that the second installment of tax would have been due, had the taxpayer elected on Form 7004 to pay tax in installments. You suggest that a taxpayer who pays 100% of his tentative tax should not be disadvantaged relative to a taxpayer who pays in installments with respect to deficiency interest. If the instant taxpayer had paid in installments, interest would only run on any deficiency smaller than the second payment from the date the second payment was due, [REDACTED].

As authority, you cite Eagle-Picher Industries v. United States, 79-1 U.S.T.C. para. 9255 (U.S.D.C. Ohio). In that case, the taxpayer's tentative liability was the same as his estimated tax payments, and he therefore made no remittance with his Form 7004. Taxpayer subsequently received another extension of time to file and finally filed his return on August 15, 1971, six months after his original due date of February 15, 1971. This return showed an overpayment of taxes which was credited to taxpayer's estimated tax payment due August 15, at his request. Eventually, an examination determined a deficiency. The District Court held that taxpayer did not owe any interest on this deficiency until August 15. The court found that Form 7004

09531

constituted a return, and that the taxpayer had fully paid the tax shown on the Form 7004. Thus, there was no deficiency on which interest was required to be paid until August 15, 1971. The court then went on to say that the same conclusion could be reached by using the analysis of Avon Products, Inc. v. United States, 588 F.2d 342 (2d Cir. 1978). Applying the Eagle-Picher result to this case, you conclude that interest should not run on the taxpayer's deficiency until [REDACTED] when it filed the 1120 showing an overpayment of tax.

We reach a different result. We believe that this situation is covered by Situation 1 of Rev. Rul. 88-98, 1988-2 C.B. 356. This revenue ruling follows Avon Products and supersedes Rev. Rul. 83-112, 1983-2 C.B. 247, which first announced the Service's intent to follow Avon Products. The facts in Situation 1 of Rev. Rul. 88-98 are identical with the instant facts, except that the estimated tax payment to which the overpayment was applied was due September 15. The revenue ruling concludes that interest does not begin to run on the subsequently determined deficiency until September 15, the date that the overpayment is credited against the subsequent year's estimated tax payment. This is because, as held by Avon Products, interest only runs when the tax is both due and unpaid. Until the application of the overpayment on September 15, the tax was not unpaid. Applying this rationale to [REDACTED] we conclude that interest would start to run on the deficiency [REDACTED] the date that the overpayment was credited against estimated tax payments due for the subsequent year.

Under this rationale, we would concur with the result in Eagle-Picher, although not its primary analysis. We do not believe that our result is inequitable because [REDACTED] received the benefit of having reduced the amount of estimated tax payment due for the subsequent year, as of [REDACTED]. If [REDACTED] had elected to pay its tentative tax in installments, and therefore not paid a second installment (as of the due date of the second installment they would have believed that they were fully paid because the first installment was equal to the amount of tax shown as due on their 1120), they would have received no reduction in the amount of payments required for estimated taxes for the subsequent year. Thus, we do not feel that [REDACTED] was treated inequitably as compared with a similarly situated taxpayer which elected installment payments. We also note that [REDACTED] elected not to make installment payments. Thus, it would seem that the amount of interest accruing in three months on \$ [REDACTED] was a matter of indifference to them. This also distinguishes them from the taxpayer in Eagle-Picher who could not elect installment payments because his estimated tax payments equalled the tentative tax due.

To reiterate, based on Rev. Rul. 88-98, we conclude that interest on [REDACTED]'s [REDACTED] deficiency runs from the date that it was credited against the subsequent year's estimated tax liability, [REDACTED]. If we can provide further assistance, please contact George Bowden at 566-3407.

Sara M. Coe / JCH
SARA M. COE

This document may include confidential information subject to the attorney-client and deliberative process privileges, and may also have been prepared in anticipation of litigation. This document should not be disclosed to anyone outside the IRS, including the taxpayer involved, and its use within the IRS should be limited to those with a need to review the document in relation to the subject matter or case discussed herein. This document also is tax information of the instant taxpayer which is subject to I.R.C. § 6103.